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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI JAGDISH BHALLA, Ag. C J

Writ Petition (C) No.161 of 2007

Petitioner
Applicant

Krishna Singh Tomer Son of Shri Jaichandra Singh Tomer, aged about 37 years, Resident of Village Labhandi, Raipur, Tahsil and District Raipur (CG)

Versus

Respondents
Plaintiffs

1. Smt Pushpa Chouhan widow of Late Shri Jagdish Chauhan;

2. Surendra singh Son of Late Shri Jagdish Chauhan;

3. Birendra Singh Son of Late Shri Jagdish Chauhan;

4. Ravindra Singh Son of late Shri Jagdish Chauhan;

All Plaintiffs ar Chauhan Chhatri, Cultivator and resident of Labhandi, Raipur, Tahsil and District Raipur (CG)

Defendants

5. Balram Singh Chauhan, aged about 65 years, Son of Hanuman Singh, Resident of Sadar Bazar, Raipur, Tahsil and District Raipur (CG)

6. Smt Shanti Bai, aged about 65 years, widow of Late Shri Shivram Singh;

7. Mohan Singh, aged about 44 years, Son of Late Shri Shivram Singh;

8. Manohar Singh, aged about 42 years Son of Late Shri Shivram Singh;

9. Mahendra Singh, aged about 30 years Son of Late Shri Shivram Singh;

10. Rajkumar Singh, aged about 25 years,

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Son of Late Shri Shivram Singh;

11. Suman Bai, aged about 33 years, D/o Late Shri Shivram Singh;

12. Pushpa Devi aged about 28 years D/o Late Shri Shivram Singh;

13. Mamta Bai, aged about 22 years D/o Late Shri Shivram Singh;

All residents of House No.595, Yadav Colony, Shantinagar, Jabalpur, Tahsil and District Jabalpur (MP)

14. Brijraj Singh, aged about 61 years Son of Shri Shivraj Singh, Resident of Gupteshwar Madan Mahal Ward, Jabalpur, Tahsil and District Jabalpur (MP)

15. Shakuntala Bai, aged about 45 years Widow of Late Shri Rudra Kumar Singh;

16. Smt Asha, aged about 26 years D/o Late Shri Rudra Kumar Singh;

17. Ku Neeru, aged about 23 years D/o Late Shri Rudra Kumar Siingh;

18. Ku Reeta, aged about 13 years, D/o Late Shri Rudra Kumar Singh; Minor, through her natural guardian mother Shakuntala Bai widow of Late Shri Rudra Kumar Singh;

All are Chauhan Chhatri and resident of Gole Bazar, Raipur Tahsil and District Raipur (CG)

19. Smt Vijay Laxmi, aged about 35 years, Wife of Shri Rajbal Singh Bais, Resident of Village Jamunipur, PO Kutu, District Allahabad (UP)

20. Smt Meera Bai, aged about 40 years Wife of Shri Biharilal, Resident of H.No.12/147, Gole Bazar, Raipur, Tahsil

and District Raipur (CG)

Writ Petition under Article 227 of the Constitution of India

Present: Shri PP Sahu, counsel for the petitioner.
Shri Pankaj Agrawal, counsel for the legal heirs of respondent No.5.
Shri Manoj Paranjape, counsel for respondent No.15
Ms Bharati Soni, & Shri Varun Mishra, counsel for respondent No.20.

ORAL ORDER
(Passed on 4th December, 2007)

This writ petition is directed against the impugned order dated 14.11.2006 whereby petitioner's application for substitution of legal heirs under Order XXIII Rule 3 of the Code of Civil Procedure has been rejected by the trial Court. On 10.11.1994 the petitioner moved an application under Order XXIII Rule 3 of the Code of Civil Procedure before the trial Court for substitution in place of one Smt Savitribai. The said application was allowed by the trial Court by order dated 06.10.1995. Being aggrieved by the said order, respondent No.20 - Smt Meera Bai filed a Civil Revision bearing No.2102/1995 wherein the present petitioner was one of the respondents. After hearing the parties, the revision was allowed, the order passed by the trial Court was set aside and the matter was remanded back to the trial Court to hold a summary enquiry on the application made by the non-applicant No.1 (present writ petitioner) for substitution in place of deceased plaintiff as legal heir on the basis of a will. In light of the above directions, the trial Court afforded an opportunity by recording the evidence of three

witnesses including the Registrar and finally rejected the application of the petitioner by a speaking order. Hence this writ petition.

Learned counsel for the petitioner submitted that learned trial Court has exceeded its jurisdiction by deciding the valid proof of the will in a summary proceedings under Order XXII Rule 5 of the CPC which is not the forum and place to decide the same. It has been further submitted that the trial Court ought to have considered the material available on the record which could have led the trial Court to only one decision i.e. application of substitution of the petitioner to be allowed. It has also been submitted that learned trial Court failed to appreciate the contents of the will. It has been emphatically argued by learned counsel for the petitioner that one of the witnesses who happens to be Registrar has signed the will and according to him, the contents of the will were read out to the witnesses and presumption is in favour of the petitioner that the will is genuine. In support of his argument, petitioner relied upon the decision in the matter of **Kaluram s/o Shri Ganga Ram, Vs Charan Singh and another** (AIR 1994 Rajasthan 31).

> " Para - 6. Having given my careful consideration to the rival contentions raised before me, I am of the opinion that this Revision Petition merits acceptance. Section 2 (11) of the CPC, which defines 'legal representative', makes it abundantly clear that the persons other than legal heir can also be legal representative. Even an intermeddler with the estate of deceased can also be allowed to represent the estate for the purpose of pending proceedings before the court. It is true that all legal heirs are, ordinarily, also legal representatives, but the converse is not true. All

> legal representatives are not necessarily legal heirs as will. The decision as to who is the legal representative for the purpose of proceedings is necessarily limited for the purpose of carrying on the proceedings and cannot have the effect of conferring of any right of heirship to the estate of the deceased. The decision on this issue also does not operate res judicata on the question of heirship in the subsequent proceedings. In view of this settled position of law, it must beheld that the enquiry into right to heirship is not the determining factor in deciding whether a person is or is not a legal representative for the purpose of proceedings before the court. What is required to be considered is whether the person claiming to represent the estate of the deceased for the purpose of *lis* has sufficient interest in carrying on litigation and is not any imposter. In case of rival claimants, it may also be necessary to decide that out of the rival claimants, who really is the person entitled to represent the estate for the purpose of particular proceedings. Even that determination does not result in determination of inter se right to succeed to property to the deceased and that right has to be established in independent proceedings in accordance with law.

Learned counsel for the respondent Shri Manoj Paranjape emphatically argued that the order passed by the trial Court does not suffer from any illegality or any jurisdictional error. It has been further submitted that the trial Court was very careful while considering the will. No finding has been recorded by the trial Court against the will except the observation that it was suspicious in nature (Vishwas yogya nahin). The summary enquiry as directed by the High Court was conducted by the trial Court on the basis of material available on the record and it speaks volumes in favour of the respondents. It has been further submitted that the trial Court was the forum and place to decide the status of the petitioner as

legal representative on the application moved by the petitioner himself. In support, learned counsel heavily relied upon the decision of the Apex Court in the matter of Mrs Annupam Pruthi and others Vs Smt Rajen Bal and others (AIR 1988 SC 2041)

> " Para - 3 Learned counsel for appellants urged that once substitution application made by Smt.Rajen Bal had been allowed by the learned single Judge, the order had become final and it could not be recalled or modified by the learned single Judge on the application of Smt. Rajen Bal merely because she had raised claim on the basis of a will alleged to have been executed by Prakash Bal, deceased. He further urged that the Division Bench of the High Court erred in holding that the question as to who were the legal heirs and representatives of Prakash Bal deceased had been raised, it was mandatory duty of the learned single Judge, to decide the same as enjoined by Order 22, Rule 5 of the Code of Civil Procedure. He further urged that Mrs Rajen bal and Rohit Bal being consenting parties to the order of substitution dated 24-7-1972 they were estopped from questioning the legality of the said order or for asking the court to recall or modify the same. Learned counsel for the respondents on the other hand urged that once a dispute relating to the question as to who were the legal representatives and heirs of Prakash Bal had been raised by Smt Rajen Bal, it was the mandatory duty of the court to decide the same under Order 22 Rule 5 of the Code of Civil Procedure, which requires the Court to decide the same on merits and if necessary it could examine the witnesses. The Division Bench had therefore rightly set aside the order of the single judge and directed him to decide dispute in accordance with the provisions of Order 22 Rule 5.
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> Para - 4 We have given our anxious consideration to the questions raised by the learned counsel for the parties. We are however of the opinion that having regard to the facts and circumstances of the case the Division Bench was not justified in setting aside the order of the learned single

Judge dated 23-4-1976. Admittedly Smt. Rajen Bal had herself made an application for bringing on record the legal heirs and representatives of Prakash Bal deceased and according to her Mrs. Anupum Purthi and Mrs Rupum Khattan, the two married daughters of Prakash Bal were legal heirs and representatives along with her and Rohit Bal, minor son. Since no party raised any objection, the learned single Judge was justified in directing the substitution of legal heirs of Prakash Bal deceased as proposed by Smt Rajen Bal. Smt Rajen Bal made another application for the recall of the Order dated 24-7-1972 on the basis of Will alleged to have been found later on. The question whether the Will is genuine and whether Prakash Bal had executed the Will gifting the entire property in dispute to Mrs Rajen Bal and her minor son, exclusively, is highly disputed, which can be decided in an appropriate proceedings on the basis of evidence produced by the parties. Since the substitution application had already been disposed of, that question could not be re-opened subsequently at the instance of Smt Rajen Bal. Provisions of Order.22, Rule.5 stood fully complied with when the question of substitution of heirs and legal representatives of Prakash Bal was decided by the Order dated 24-7-1972. That order could not be recalled at the instance of Smt. Rajen Bal. We are therefore of the opinion that the learned single Judge's order dated 23-4-1976 must be upheld. It would how ever be open to Smt Rajen Bal to claim her right under the Will through appropriate proceedings before Competent Court and this order will not prejudice her claim."

Shri Manoj Paranjape submits that the case in hand is similar to the above case. It was further pointed out that the trial Court has decided the matter in light of the provisions of the Order XXII Rule 5 of the Code of Civil Procedure and Section 68 of the Indian Evidence Act.

Shri Pankaj Agrawal, learned counsel appearing for one of the respondents submitted that the decision on the said application will not come in the way of the petitioner to file a suit for title on the basis of a will.

Shri Varun Sharma, learned counsel appearing for respondent No.20 has adopted the argument of Shri Manoj Paranjape. However, learned counsel relied upon the decision in the matter of **Mrs Josephine Jorome & others Vs S Santiago & another** (AIR 2007 (NOC) 2486 (Madras)).

Learned trial Court while rejecting the application of the petitioner recorded the reason that the documents were already ready and the witnesses were asked to sign for a different purpose. Learned counsel for the petitioner could not explain any reason that why the documents were not read out either to Savitri Bai or to other witnesses to the registration of the will.

I find that both the attesting witnesses were examined; however, they showed ignorance about the will. They informed the Court in their evidence that they were told that they required to sign an agreement regarding construction of a house and a water pump connection.

From the perusal of the evidence of the Registrar, it is crystal clear that the contents of the will were not read over to the parties as alleged by learned counsel for the petitioner. The extract of the evidence of the Deputy Registrar is reproduced as under :

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3. "ये सही है कि सील लगने के बाद मेरे पास दस्तावेज आता है सील प्यून लगाता है अटेस्टिंग विटनेस और निष्पादक के हस्ताक्षर पृष्ठ क्र. 4 में पहले ही लगते है उसके पश्चात मेरे पास पंजीयन के लिए आते है। अंतिम पृष्ठ पर हचान कार्यवाही और स्वीकृति मेरे सामने आती है। मेरे सामने वसीयत के कॉन्टेन्ट्स गवाहों के सामने नही पढे जाते है।"

This Court is of the considered opinion that the trial Court while rejecting the application neither exceeded its jurisdiction, nor committed any error of law. In fact, the trial Court had taken all precautions and was careful while rejecting the application that the right of the petitioner may not be affected in further proceedings. The material available was considered in accordance with law, and the order of the trial Court is a speaking one. I find force in the reasoning indicated therein. Accordingly, no interference is warranted and the writ petition is dismissed. Interim order, if any stands discharged. It would not be out of place to direct the Court below as the matter is pending since long to make earnest effort for the speedy justice to the parties. Therefore, let the matter be decided expeditiously.

In the light of the judgment referred hereinabove of the Apex Court, it would be open for the petitioner to claim his right under the will through appropriate proceedings before the competent Court of law and this order will not prejudice his claim.

Sd/-
Acting Chief Justice

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